AF/1761 #35 8-24-01

PATENT APPLICATION
Serial No. 08/716,223
Attorney Docket No.: 702-961170

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Group Art Unit 1761	:	
In re Application of	:	
G.A. VAN SCHOUWENBURG	:	METHOD FOR PREPARING A COHERENT PIECE OF MEAT FROM SMALLER PIECES OF MEAT, AND THE COHERENT PIECE OF MEAT OBTAINED
Serial No. 08/716,223	:	
Filed November 22, 1996	:	
Examiner - C. Sherrer	:	Pittsburgh, Pennsylvania August 17, 2001

REPLY BRIEF

BOX AF
Commissioner for Patents
Washington, D.C. 20231

Sir:

This is in response to the Examiner's Answer dated June 19, 2001.

I. Grouping of Claims:

The Examiner's Answer states that Appellant's Appeal Brief does not include a statement that the grouping of claims set forth therein does not stand or fall together and reasons in support thereof. Contrary to the Examiner's assertions, each of the groups of claims are presented with arguments as to why those sets of claims are separately patentable.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to Commissioner for Patents, Washington, D.C. 20231 on August 17, 2001.

Julie W. Meder, Registration No. 36,216
(Name of Registered Representative)

Signature — Date: 8/17/01

Section VII of the Appeal Brief entitled "Grouping of Claims" states that pending claims 1, 3, 9-12, and 14-20 do not stand or fall together but should be considered to stand or fall according to the groups I-IV. Each of those groups is argued as separately patentable in section VII (B) entitled "Prior Art Rejections". According to 37 CFR 1.192(c)(7), in the argument under paragraph (c)(8), Appellant is to explain why the claims of each group are believed to be separately patentable. Applicant has complied with this by including in the argument section a separate discussion of each of the groups of claims in compliance with 37 CFR 1.192(c)(7) and (c)(8).

A decision on the grounds of rejection for each of the groups of claims set forth on page 3 of the Appeal Brief is respectfully requested.

II. Rejection Under 35 U.S.C. § 112, second paragraph.

Claims 1, 3, 9-12, and 14-20 stand rejected under 35 U.S.C. § 112, second paragraph, for indefiniteness due to the phrases in claim 1 of "substantially retain the properties of unprocessed raw meat" and "substantially do not denature". These phrases are related in that they both refer to the nature of the meat following the processing steps in the method of the present invention. The Examiner asserts that the term "substantially" detracts from the clarity of the scope of the claims. Applicant traverses this rejection for the following reasons.

The method of the present invention requires that a layer of solubilized proteins is produced on pieces of meat and that the proteins in that layer are denatured and coagulated to join pieces of meat together. The bulk of the meat remains unprocessed and raw. Only in the interstices between the pieces of meat is there a change in the meat where it is denatured (not raw).

The term "substantially" is used in claim 1 to indicate that the coherent piece of meat is not entirely raw but that the overall coherent piece of meat retains the properties of

unprocessed raw meat because only the proteins in between the pieces of raw meat are denatured and coagulated to hold the pieces of meat together.

One skilled in the art of food processing would understand that by denaturing a layer of proteins on the exterior of smaller pieces of meat and then forming the small pieces of meat into a coherent piece of meat would substantially retain the properties of raw meat as set forth in claim 1 but clearly an insubstantial portion of the coherent piece of raw meat (namely, the denatured proteins between the pieces of meat) is no longer raw since some proteins are denatured. The term "substantially" reflects the limited denaturing process which occurs in the method of the present invention. The use of the term "substantially" in claim 1 is appropriate to indicate with sufficient distinctiveness that the bulk of the coherent piece of raw meat retains the properties of unprocessed raw meat with only the layer of protein between the small pieces of meat being denatured.

The Examiner's questions of "how raw?" and "how much denaturation?" are not pertinent to an understanding of the scope of claim 1. Claim 1 indicates that a layer of exudated solubilized proteins forms on the surfaces on the pieces of meat. Only the surfaces of the meat include solubilized proteins which selectively denature and coagulate to join the pieces of meat together. Accordingly, the interior of the pieces of meat (anything but the exudated solubilized proteins) is not denatured and, thus, remains raw. The term "substantially" does not modify "how raw" the meat pieces are or "how much denatured" the proteins are in between the pieces of meat. Instead, "substantially" means that the bulk of the meat retains the properties of unprocessed raw meat and that the proteins in the pieces of meat which make up the entire coherent piece of meat are not denatured. One skilled in the art in meat processing would understand upon reading claim 1, particularly in light of the specification, that only the layer of exudated solubilized proteins are denatured so that the

proteins present in the smaller pieces of meat substantially do not denature and that they retain the properties of unprocessed raw meat.

Claim 1 and dependent claims 3, 9-12, and 14-20 define the subject matter of the present invention according to the specification and according to the interpretation that would be given by one skilled in the art at the time the invention was made. According to MPEP at §2173.03: the Examiner

> should allow claims which define the patentable subject matter with a reasonable degree of particularity and distinctiveness. Some latitude in the matter of expression and the aptness of terms should be permitted even though the claim language is not as precise as the examiner might desire....The essential inquiry pertaining to this requirement is whether the claims set out and circumscribe a particular subject matter with a reasonable degree of clarity and particularity.
> (Emphasis in original)

The use of the term "substantially" in claim 1 is reasonable in view of the subject matter which requires that only a minor portion of the coherent piece of raw meat is denatured so that the smaller pieces of meat substantially retain the properties of unprocessed raw meat and substantially do not denature. Applicant respectfully requests that the claim language of "substantially" be granted some latitude because the claim language is reasonably particular and distinct for the subject matter recited therein.

Reversal of the rejection under 35 U.S.C. § 112 is respectfully requested.

III. Prior Art Rejections

In the Examiner's Answer, the Examiner has refused to grant deferance to the expert opinion of Dr. Gerrit Winjgaards which was submitted to explain the teachings of the Weiss et al. patent and to demonstrate the distinctions between the process of preparing sausage according to the Weiss et al. patent and the claimed invention. According to the Examiner's Answer "[i]t is not seen why the Weiss et al. process would not produce meat

pieces that are covered with solubilized proteins." However, this is precisely what the Declaration of Dr. Winjgaards was intended to show.

Dr. Winjgaards is an independent food technology specialist without interest in the outcome of the present application. His Declaration was intended as an explanation of what is disclosed in the Weiss et al. patent. As an expert in food processing technology, Dr. Winjgaards is highly suited for explaining what is actually disclosed in the Weiss et al. patent. Despite the assertions to the contrary by the Examiner, the Declaration is not completely devoid of factual support for Dr. Winjgaards' opinion as to the differences between the process described in the Weiss et al. patent and the present invention. Section 2 of Dr. Winjgaards' Declaration explains the processes disclosed in the Weiss et al. patent and what is meant by the method steps disclosed therein as well as the type of product which is made thereby.

The comparison set forth on page 5 of the Declaration is between a process produced according to the acid coagulation process of the present invention and a salami produced according to a process of the Weiss et al. patent. As noted in the penultimate sentence in section 5 of the Declaration, "[t]he acidification in Weiss's process must, therefore, have a different effect than in the acid coagulation process." The intent of the final paragraph in section 5 of the Declaration is to compare a product produced according to methods, such as in the Weiss et al. patent with a product produced by the acid coagulation process of the present invention. By referring to an acid coagulation process, Dr. Winjgaards is referring to the process of the present invention and by referring to the salami that was tested, he has referred to a process for producing a product according to the Weiss et al. patent. Hence, the Declaration by Dr. Winjgaards is not devoid of factual support for his conclusions. Although the comparison between a product of the present invention and of the prior art is not set forth in a manner with which an Examiner might prefer, it still contains a

comparison which demonstrates the distinctions between the prior art and the present invention.

The Declaration by Dr. Winjgaards is factually based and is directed to an explanation of how one skilled in the art would interpret the Weiss et al. patent to demonstrate that the prior art is distinct from the process of the present invention. Dr. Winjgaards' opinion is not directed to the ultimate legal question at issue but to the teachings of the Weiss et al. patent so that the Examiner, and now the Board, can properly assess and recognize the distinctions between the processes disclosed in the Weiss et al. patent and that of the present invention.

Finally, with respect to the Examiner's objection and failure to give weight to Applicant's assertion that the pH decrease in the Weiss et al. patent to levels of 4.8 to 4.4, at page 9 of the Appeal Brief, results in a salami which is no longer substantially raw the fact still remains that the Weiss et al. patent does not indicate any change in pH in the interfaces between the pieces of meat from which the salami is formed as is required by claims 3, 19, and 20 of the present application. The Weiss et al. patent does not specify a drop of pH on any interface between any portions of the components of the salami described therein but only that the entire pH of the salami disclosed therein has been lowered.

For these reasons and those discussed in the Appeal Brief, the Weiss et al. patent does not anticipate the subject matter of claims 3, 19, or 20.

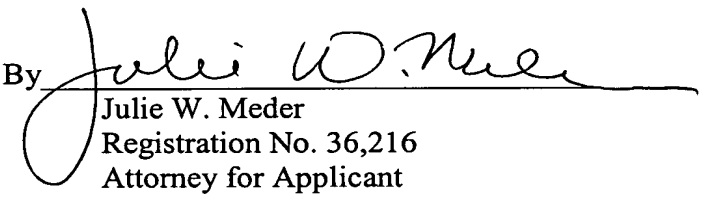
With regard to the rejection under 35 U.S.C. § 103(a), Applicant has not simply "recognized another advantage which would flow naturally from following the suggestion of the prior art". Dr. Winjgaards' Declaration and the detailed discussion of the prior art in the Appeal Brief demonstrate that the claimed invention possesses much more than "obvious differences" from the Weiss et al. patent taken alone or in combination with the Weiner patent. The Weiss et al. patent is directed to production of a meat product quite

distinct from the ultimate goal of the present invention, a coherent piece of raw meat. The massaging and/or tumbling of meat pieces with salt, the production of solubilized proteins, and the denaturation production and coagulation thereof and the pH drop between the pieces of meat do not occur (and are undesired) in the process of the cited references and, as such, cannot be obvious modifications thereof.

For the foregoing reasons and for all the reasons set forth in the Appeal Brief filed April 2, 2001, claims 1, 3, 9-12, and 14-20 are believed to define over the prior art of record and be in condition for allowance. Reversal of the rejections and allowance of claims 1, 3, 9-12, and 14-20 are respectfully requested.

Respectfully submitted,

WEBB ZIESENHEIM LOGSDON
ORKIN & HANSON, P.C.

By 

Julie W. Meder
Registration No. 36,216
Attorney for Applicant
700 Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219-1818
Telephone: (412) 471-8815
Facsimile: (412) 471-4094